

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

IN RE: **Mid Valley Mart, LLC &
 Achraf Assi**

ASSURANCE OF DISCONTINUANCE

The State of West Virginia, by and through Attorney General Patrick Morrissey, (hereinafter "the State") and Mid Valley Mart LLC and Achraf Assi (hereinafter "Defendants") freely and voluntarily enter into this Assurance of Discontinuance relating to Defendants pricing of water products during a declared state of emergency in January 2014. Pursuant to West Virginia Code § 46A-7-107, Defendants Mid Valley Mart, LLC and Achraf Assi hereby agree to the following terms, conditions, and agreement in the conduct of its business and assure any and all future conduct will comply with the West Virginia Consumer Credit and Protection Act (W.Va. Code § 46A-1-1 *et seq.*) and other applicable law.

BACKGROUND

1. Defendant, Mid Valley Mart, LLC, d.b.a. Mid Valley Mart I and Mid Valley Mart II, is a for-profit limited liability company organized under the laws of the State of West Virginia.
2. Mid Valley Mart, LLC's principal place of business and registered address is 3706 Teays Valley Road, Hurricane, WV 25526. Mid Valley Mart LLC also operates Mid Valley Mart II located at 2494 U.S. 60, Hurricane, WV 25526.
3. Mid Valley Mart LLC is licensed, registered and has been conducting business in West Virginia since at least October 15, 2004.

4. Defendant Achraf Assi is the registered manager of Mid Valley Mart, LLC, and resides in Putnam County, West Virginia.

5. Both Mid Valley Mart and Mid Valley Mart II sell gasoline and operate a related retail store in which consumer food items, essential consumer items, goods and supplies are sold.

6. Among the consumer items sold by Defendants at their stores is bottled water, which they sell in various sizes and containers.

7. On Thursday, January 9, 2014, the Governor of West Virginia declared a state of emergency due to a contamination of the water supply operated by West Virginia American Water.

8. The state of emergency applied to nine (9) counties, including specifically Putnam County, West Virginia.

9. The water contamination prompted a DO NOT USE declaration and residents and consumers in the nine affected counties were directed not to use, bathe, or drink the tap water.

10. As a result of the DO NOT USE order, bottled water, a consumer good and food item, additionally became an essential consumer item and an emergency supply, as contemplated and defined in W.Va. Code § 46A-6J-2.

ATTORNEY GENERAL ALLEGATIONS AND APPLICABLE LAW

11. The Attorney General's Consumer Protection Division commenced an investigation of Defendants Mid Valley Mart and Achraf Assi after receiving a complaint

alleging that Defendants had increased the price of a one gallon jug of Tyler Mountain Spring Water by more than 100% during the declared State of Emergency.

12. Pursuant to West Virginia Code § 46A-6J-3, during a declared state of emergency, it is unlawful for an entity to sell consumer goods, consumer food items, essential consumer items, or emergency supplies for a price greater than ten percent (10%) above the price charged by that person for those goods or services on the tenth day immediately preceding the declaration of emergency.

13. During the course of the investigation, the State obtained Defendants' sales records. The sales records confirmed the increased pricing of the one gallon jug of Tyler Mountain Spring Water during the declared state of emergency.

14. The State's investigation also subsequently revealed that Defendants increased the price of multiple other water products by more than 10% during the declared state of emergency. Mid Valley Mart indicates that it set the retail price of other water products during the time of public emergency due to additional costs incurred by it during the water crisis.

15. Under the West Virginia Consumer Credit and Protection Act, it is unlawful for an entity to engage in unfair methods of competition and unfair or deceptive acts or practices in the sale of a good. W.Va. Code § 46A-104.

16. W.Va. Code § 46A-6-102(7) includes in its definition of "Unfair methods of competition and unfair or deceptive acts or practices" the following:

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

17. On February 14, 2014, the State filed suit against Defendants in Putnam County Circuit Court (Civil Action No. 14-C-59) for price gouging and other violations of the West Virginia Consumer Credit and Protection Act.

18. The matter remains pending in the Putnam County Circuit Court.

AGREEMENT

19. Defendants Mid Valley Mart, LLC and Achraf Assi admit they improperly raised the price of some water products during a time of public emergency and acknowledge that the Attorney General possessed strong, good faith grounds to pursue this matter.

20. In order to fully comply with the West Virginia Consumer Credit and Protection Act, Defendants hereby agree to take the following actions:

- a. Defendants shall pay a civil penalty totaling \$5,000.00 to the Attorney General office. An initial payment of \$2,500 shall be made within thirty (30) days of execution of this Assurance of Discontinuance and payment of the balance of \$2,500 shall be made on or before March 1, 2015; and
- b. Defendants, their employees, agents, servants, successors, and assigns, hereby promise and voluntarily assure the Attorney General that it will

comply with the WVCCPA, and other applicable state and federal laws in its future business practices.

21. In recognition of Defendants' agreement to the foregoing terms and conditions, the State will dismiss its civil action (14-C-59) pending in Putnam County Circuit Court.

22. It is agreed and understood that this Assurance is and shall be public.

IN WITNESS WHEREOF, Defendants Mid Valley Mart, LLC and Achraf Assi have caused this Assurance to be executed and represent that the person whose signature appears below is authorized to bind it to the terms and conditions set forth herein. The Attorney General of West Virginia or his designate has approved this Assurance.

AGREED TO BY:

MID VALLEY MART, LLC and
ACHRAF ASSI

By: 

ACHRAF ASSI,
Individually and as Manager of
Mid Valley Mart, LLC
3706 Teays Valley Road
Hurricane, WV 25526

Date:

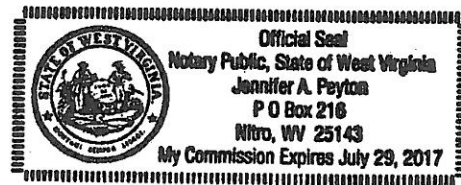
STATE OF WEST VIRGINIA,

COUNTY OF PUTNAM, TO WIT:

I, Jennifer A. Peyton, a Notary Public in and for the County and State aforesaid, do hereby certify that ACHRAF ASSI, on behalf of himself and Mid Valley Mart, LLC, has this day acknowledged and signed the foregoing Assurance of Discontinuance before me in my said County and State.

My commission expires 7/29/17.

Jennifer A. Peyton
NOTARY PUBLIC



APPROVED BY:

STATE OF WEST VIRGINIA, by and through
PATRICK MORRISEY, Attorney General

By: Patrick Morrissey
PATRICK MORRISEY
Attorney General
WV State Bar # 11777
Office of Attorney General
State Capitol
Building 1, Rm. E-26
Charleston, WV 25305

Date:

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO WIT:

I, Jennifer A. Peyton, a Notary Public in and for the County and State aforesaid, do hereby certify that PATRICK MORRISEY on behalf of the State of West Virginia has this day acknowledged and signed the foregoing Assurance of Discontinuance before me in my said County and State.

My commission expires 7/29/17.

Jennifer A. Peyton
NOTARY PUBLIC

